

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 647 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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A K SUMARA

Versus

STATE OF GUJARAT  
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Appearance:

MR ND NANAVATI for Petitioner  
M/S PATEL ADVOCATES for Respondent No. 1  
NOTICE SERVED for Respondent No. 2, 3  
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CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 05/05/2000

ORAL JUDGEMENT

The petitioner who was working in 1988 as Range Forest Officer has filed this petition to quash and set aside the order dated 18.12.1987 whereby he was called upon to deposit the amount of loan taken by him, with interest.

The petitioner further prayed to direct the respondents to further release a sum of Rs. 24,000/towards house building loan.

It is necessary to refer the facts averred in the petition. The petitioner has come out with the case that he applied for loan for the purchase of a house. Government of Gujarat sanctioned Rs. 35,000/- as house building loan in 1981. The petitioner has not taken trouble to mention as to when the application was made and whether any form was required to be filled in or not. He has not mentioned that the house or property was available and what amount was required to be paid for purchase of the property. These facts were very much within the knowledge of the petitioner and when he has approached the Court, it was his duty to produce necessary relevant material before the Court.

He has further submitted that in the year 1981, he tried to purchase building duly constructed but he could not purchase within Rs. 35,000/-. He has averred that property admeasuring 127.20 sq.mts. situated in Ward No. 3 in Bhuj was available at a price of Rs 61,111/-. He has averred that he has purchased the said property. However, as the Government has sanctioned only Rs. 35,000/-, he could not pay the amount to the owner of the property and only Banakhat has been executed. He is required to pay remaining amount of Rs. 26,111/-. It is in view of this that he submitted another application for sanction of Rs. 24,000/- which was forwarded to the Government. However, the orders on such application are not placed on record. The petitioner has placed on record the communication dated 12.1.1987 with reference to the letter addressed by the Conservator of Forest. In the petition, the petitioner has nowhere averred as to what salary he was drawing at the relevant time. Its relevance is that the amount required to be disbursed is on the basis of salary which is being drawn by the employee. If it was his case that no information was to be furnished and whatever the amount one is entitled to get and only application was to be made, he should have stated specifically. However, from reply, it transpires that the form was to be filled in for advance and thus, details were furnished and on that basis loan was sanctioned.

From the affidavit in reply filed by the Chief Conservator of Forest, it clearly transpires that the petitioner submitted application on 9.7.1979 for loan of Rs. 35,000/-. It is also submitted that in the form prescribed for advance, details are required to be given

along with necessary amount required by him. If in the year 1979, the petitioner submitted application with a view to purchase property which was in his mind, it was his duty to purchase that property or that if he could not purchase the said property, it was his duty to deposit the amount forthwith with the Government and to apply for a loan. He cannot sit tight over the amount which he had received. He has not mentioned as to on what date, he entered into agreement with one Bakali Jisab, the owner of the property, with whom he had entered into agreement. It is required to be noted that only agreement to sell was executed. The petitioner has not placed on record a copy of the said document. Thus, by vague averments, he filed the petition. From Annexure 'A', which is produced on record by the petitioner, it is difficult to place any reliance as in the body writing of the letter, it is mentioned that he submitted application on 28.3.1981 for additional sum of Rs 24,000/-. The letter is signed by the Chief Conservator of Forest and is addressed to the Additional Chief Secretary, Agriculture, Forest and Cooperation Department. If the letter is dated 19.3.1981, it is not possible to accept that application was made on 28.3.1981. It is absolutely necessary that original record should have been placed before the Court or certified copy of the said document should have been produced on record.

Despite the fact that the petitioner was informed that he has to produce documents, he has not produced any document before the authorities. Even before this Court, as indicated earlier, he has not produced any document to show that he has purchased the property. In 1979, when he submitted the application, it was within his knowledge as to what was the value of the property he was intending to purchase and to what extent, the petitioner was required to pay the amount. It further transpires that the say of the petitioner is that 100% loan should be given to the employee for purchase of property. As indicated earlier, when he requested the authority to sanction amount of Rs 35,000/-, the same was sanctioned. It appears that on the basis of salary amount, loan has been sanctioned. On the date when he submitted his application, his salary was Rs. 475/and even if it is considered that as per the resolution, he was entitled to loan equivalent to 75 months' salary, even then, it would not exceed a sum of Rs. 36,000/-. It seems that the petitioner has not mentioned the amount of salary with an oblique motive.

It is required to be noted that after the loan was sanctioned for purchase of property, as mentioned in the

form, either the property should have been purchased or if the property could not be purchased, then it was the duty of the petitioner to deposit the amount with the State Government . The petitioner should not forget that the loan was sanctioned to buy a property as indicated in the document. If he has diverted the fund for any other use, then, the same is required to be deprecated. If the amount is not utilised for the purpose for which loan was sanctioned then as indicated above, it was the duty of the petitioner to deposit the amount . The loan was sanctioned for purchase of the property and that the amount could have been utilised for purchase of that property only and if at all he wanted to purchase a property other than which indicated, then it was his duty to first inform the Government before purchase of the property. When the petitioner has not stated necessary facts in the petition and the relevant facts which were required to be stated have not been stated and he has not placed before the Court the most relevant fact about the date of submitting the application, salary drawn at the relevant time and explanation as to what he did with the amount which was lying with him from the date of receipt till payment made to other person from whom he is stating that he has executed agreement to sell, it can be said that the petitioner has not approached this Court with clean picture and, therefore, this petition is required to be dismissed.

It is directed that the petitioner shall deposit the amount with the State Government within four weeks with interest at 15% . Rule is discharged. Interim relief is vacated. No order as to costs.

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